

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA

FILED

AUG 21 2001

Clerk U. S. Bankruptcy  
Court Tampa, FL

In Re:

EMPLOYEE DISPUTE  
RESOLUTION PLAN

Administrative Order  
FLMB-2001-3

ORDER ADOPTING  
MODIFIED EMPLOYEE DISPUTE RESOLUTION PLAN

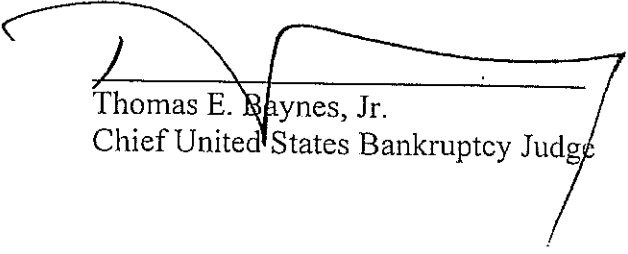
Upon due consideration, after having reviewed the Employee Dispute Resolution Plan adopted by the Eleventh Circuit Council on September 3, 1998, the Court finds it appropriate to modify the Equal Employment Opportunity Plan and Employee Dispute Resolution Plan. Accordingly, it is

ORDERED, ADJUDGED, AND DECREED that the order dated August 26<sup>th</sup>, 1997, adopting the Model Employee Dispute Resolution Plan is amended. It is further

ORDERED, ADJUDGED, and DECREED that the attached Dispute Resolution plan replaces the Model Employee Dispute Resolution Plan.

DONE and ORDERED in Tampa, Florida this 21st day of August 2001.

For the Court:

  
Thomas E. Baynes, Jr.  
Chief United States Bankruptcy Judge

## EMPLOYEE DISPUTE RESOLUTION PLAN

October 1, 1998

### CHAPTER I. GENERAL PROVISIONS.

#### § 1 Preamble.

This is the Employment Dispute Resolution Plan ("EDR Plan") of the Middle District of Florida, U.S. Bankruptcy Court. It is based on the Federal Judiciary Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States and on the Employment Dispute Resolution Plan of the Eleventh Circuit and provides rights, protections and procedures for employees of United States courts within the Eleventh Circuit comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

On its effective date this Plan supersedes the Equal Employment Opportunity Plan ("EEO Plan") previously adopted by this court. The duties of EEO Coordinators under those superseded EEO plans will be assumed by the EDR Coordinator (except as affected by changes in the dispute resolution procedures set forth in Chapter VIII of this Plan). Any discrimination complaint pending on the effective date of such new plans shall continue to be processed and considered under the procedures established under the EEO Plan in effect at the time it was filed. Any complaint filed after the effective date of this plan shall be processed under the provisions of this plan regardless of whether the actions giving rise to such a complaint may have occurred before the effective date of this plan.

Although intended to be the exclusive remedy for employees with respect to the rights and protections afforded, this Plan does not apply to or affect—

complaints concerning a bankruptcy judge for the Middle District of Florida of the Eleventh Circuit alleging that said judicial officer engaged in conduct prejudicial to the efficient and expeditious administration of the business of the courts or is unable to discharge all of the duties of office by reason of mental or physical disability, which are to be considered exclusively pursuant to 28 U.S.C. § 372(c), or

complaints (commonly known as grievances) relating to dissatisfactions with terms or conditions of employment which either do not involve rights and protections afforded under this Plan or in circumstances where an employee elects to proceed under a less formal process as to rights set forth in this plan.

**§ 2 Scope of coverage.**

This Plan applies to the staff of court units.

This Plan does not apply to the award of contracts or subcontracts, or to employment decisions made by such contractors or subcontractors.

**§ 3 Definitions.**

For purposes of this Plan

A. The term "employee" does not include a person employed, appointed, or applying for employment, appointment, or reappointment—

- as a student intern or extern to provide services to the court on a voluntary basis
- probationary employee for a period of up to one year
- applicants for any position unless they are interviewed
- as a bankruptcy judge with respect to such person's appointment or reappointment
- unit heads (i.e., clerk of court)
- as a private attorney representing or seeking to represent indigent defendants under the Criminal Justice Act
- as a private attorney administering Chapters 7 and 11 bankruptcy estates
- as to a position in connection with pending or potential litigation (such as a Commissioner, a counselor or mediator, a Special Master, a monitor, a court-appointed expert, or counsel appointed to represent litigants or potential litigants)
- for a position other than as an employee of an "employing office" as that term is defined below

- B. The term "employing office" for purposes of coverage under this EDR plan includes all offices of the court, including the offices of the clerk and any other offices that might be created in the future. **However, it does not include judges' personal staff, i.e. secretary, judicial assistant and law clerk.** For purposes of coverage under this EDR plan, the clerk is treated as the employing officer of courtroom deputies.
- C. The term "judicial officer" means a United States bankruptcy judge.
- D. The term "court" refers to the United States Bankruptcy Court for the Middle District of Florida unless the context clearly indicates otherwise.
- E. The term "unit head" refers to the person most directly involved in or responsible for the employment decisions relating to employees and includes (e.g., the clerk of court [for other employees in the clerk's office including courtroom deputies]).
- F. As used in this plan, the term "days" refers to calendar days.

## CHAPTER II. EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

**§ 1 General.** Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), or disability is prohibited. The rights and protections previously afforded by this court's EEO Plan have been incorporated into this Plan.

- A.** The provisions of this Plan shall not be construed as modifying or reducing qualification standards for employment that have been or may hereafter be established by the Judicial Conference. There are no positions for which race, color, gender, religion, national origin, age (except as indicated in Section 3A of this Chapter), or any combination of such factors, is an occupational qualification.
- B.** The provisions of this Plan shall not be construed as calling for employment or promotion to a position for which the individual is not qualified or as providing anyone with entitlement to preferential treatment based on race, color, gender, national origin, religion, age, or disability.
- C.** Each employee of the court (other than judicial officers) is and will continue to be an "AT-WILL" employee.

**§ 2 Special provisions relating to disabilities.**

- A.** The term "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an employee.
- B.** The provisions of Section 1 of this Chapter do not preclude consideration of a person's physical or mental impairments if they would significantly affect that individual's ability to perform important aspects of the job in question. Before a person is rejected for or removed from a job because of physical or mental impairments, reasonable accommodations should be considered in making the decision.

**§ 3 Special provisions relating to age.** The provisions of Section 1 of this Chapter relating to age—

- A.** do not preclude consideration of appropriate training, experience, and education, notwithstanding the fact that such factors may be greater for older persons.

- B. do not preclude (subject to the protections afforded in Section 2 of this Chapter) consideration of a particular individual's physical or mental impairment or limitation that significantly affects that person's ability to perform important aspects of a job even though that impairment or limitation may arguably be the result of the aging process.

**§ 4 Special provisions relating to religion.** Reasonable accommodation shall be made for an individual's religious observances and practices unless it would significantly impair the operations or dignity of the court or impose undue hardship upon other court personnel.

**§ 5 Special provisions relating to sexual harassment.** Employees of the court shall not engage in sexual harassment of co-workers, subordinates, or supervisors. Sexual harassment proscribed by this paragraph includes —

- A. deliberate or repeated unsolicited and unwelcomed verbal comments, gestures, or physical contact of a sexual nature, and
- B. demands, solicitations, offers, invitations or other inducements for sexual relations between an employee and his or her supervisor, whether initiated by the employee or by the supervisor, as to which it is explicitly or implicitly indicated that future personnel decisions regarding employment, advancement, evaluation, wages, assignment of duties or other conditions of employment or advancement might, would, or should be affected by the existence or continuation of such sexual relations.

**§ 6 Other policies.**

- A. Consideration may be given in an employment decision to the length of a person's employment with the court. Persons are not entitled, however, to preferential treatment based on length of service.
- B. Efforts to accomplish the legitimate and worthy objectives of nondiscrimination must not infringe upon the principles of equal employment opportunity stated in Section 1 of this Chapter. Special recruitment efforts may properly be directed towards qualified individuals in unrepresented or under-represented segments of the available labor force, provided however that no such efforts should imply that qualified persons from other segments of the available labor force are disqualified or in any way discouraged from also becoming applicants. Vacancies shall be publicized in a manner likely to reach qualified persons of all segments of the available labor market.

## CHAPTER III. FAMILY AND MEDICAL LEAVE RIGHTS.

- § 1 **General.** Title II of the Family and Medical Leave Act of 1993, 29 U.S.C. §2611, applies to court employees in the manner prescribed in Volume I-C, Chapter X, Subchapter 1630.1, Section R, of the *Guide to Judiciary Policies and Procedures*. Coverage is limited to employees who are covered by the annual and sick leave program established under Chapter 63 of Title 5 of the United States Code and who have completed at least 12 months of civilian service with the Federal Government.

CHAPTER IV. WORKER ADJUSTMENT  
AND RETRAINING NOTIFICATION RIGHTS.

- § 1 **General.** No "employing office closing" or "mass layoff" (as defined in Section 2 of this Chapter) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to a temporary employing office closing or mass layoff that results from the absence of appropriated funds.

2 **Definitions.**

- A. The term "employing office closing" means the shutdown of a single site of employment if the shutdown results in an employment loss at the site during any 30-day period for 50 or more employees (excluding any part-time employees).
- B. The term "mass layoff" means a reduction in force which—
- (1) is not the result of an employing office closing; and
  - (2) results in an employment loss at the single site of employment during any 30-day period for at least 33 percent of the employees (excluding any part-time employees) and at least 50 employees (excluding any part-time employees). *See 29 U.S.C. § 2101.*

CHAPTER V. EMPLOYMENT AND REEMPLOYMENT  
RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES.

- § 1 **General.** An employing office shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.*

CHAPTER VI. OCCUPATIONAL SAFETY  
AND HEALTH PROTECTIONS.

- § 1 **General.** Each employing office shall use its best efforts to insist that GSA shall provide a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Because court offices and units occupy space and utilize facilities provided by the General Services Administration ("GSA") complaints that seek a remedy exclusively within the jurisdiction of the GSA are not cognizable under this Plan; such requests should be filed directly with GSA.

CHAPTER VII. DISPUTE RESOLUTION PROCEDURES.

- § 1 **Procedure for consideration of alleged violations.** An employee who claims a denial of the rights granted under Chapters II through VI of this Plan may seek resolution of such claims through the procedures of this Chapter. Employees may also file and process a grievance as to matters covered as provided in the optional grievance plan set forth in Appendix I to this plan. No matter may be the subject of both a grievance and of procedures under this plan. The procedural process provided under this Plan involves the following steps—

- A. consultation;
- B. mediation
- C. hearing before the chief judge (or a judicial officer designated by the chief judge) of the court; and
- D. review of the hearing decision under procedures established by the judicial council of the circuit.

These procedures do not preclude, and should not be construed as discouraging, any individual from seeking to resolve a claim of discrimination directly with the person or persons involved. Any such efforts do not, however, suspend or extend the time within which a request for mediation or a complaint may be timely filed; nor does a failure to



seek such direct redress constitute a procedural bar or condition to the filing of a discrimination complaint or a matter relevant to the merits of that discrimination complaint.

These procedures shall also be the remedy for claims of a denial prior to the effective date of adoption of this plan, of rights granted under a court's EEO Plan if no complaint was filed under the EEO Plan prior to implementation of this plan.

## § 2 General provisions and protections.

- A. Prohibition against retaliation.** The Court, any court unit head, or their assistants, shall not retaliate against, coerce or interfere with a complainant on anyone participating in the filing and processing of a complaint. However, the filing or pursuit of a frivolous or malicious discrimination complaint, or the presentation of knowingly false information may, if relevant, be considered in subsequent employment decisions or in the evaluation of the merits of subsequent discrimination complaints involving the same person.

In the event it is determined by the hearing officer that the complaint was filed to harass or to undermine good management or discipline by a supervisor or within an office, disciplinary action against the complainant may be recommended by the hearing officer to the appointing authority.

- B. Right to representation.** Every individual invoking the dispute resolution procedures of this Plan—or who may be affected uniquely and adversely by the resolution of a complaint under this Plan (such as, for example, a person whose promotion is claimed to have constituted a discriminatory practice)—has the right (at his or her own expense) to be represented by a person of his or her choice if such person is available and consents to be a representative. The head of a court unit involved in proceedings under this plan is likewise entitled to representation in the processing and resolution of such a matter.
- C. Case preparation.** Every individual invoking the dispute resolution procedures of this Plan—or who may be affected uniquely and adversely by the resolution of a complaint under this Plan—may apply to the officer conducting that segment of the proceeding (i.e. the EDR Coordinator, the dispute mediator or the hearing officer) for authorization to use a specific and limited amount of official time to prepare his or her case, by making written application to that officer, specifying amount of time sought, the functions to which that time will be devoted, and other court personnel involved. The decision of the officer conducting that segment of the proceeding on such a request shall be final and not subject to further review nor may the decision itself be the subject of a complaint under this plan.

- D. **Notice.** At the consultation stage, all communications shall be kept confidential as contemplated in § 5 C(3) of this chapter. A written record of all contacts must be kept by the EDR Coordinator (or Alternate EDR Coordinator) and available for review by the complainant. Beginning at the mediation stage and until final resolution of the complaint, every individual alleged to be involved in a violation of the provisions of this Plan has the right to have reasonable notice of the charges and an opportunity to respond to the allegations. The EDR Coordinator or Alternate EDR Coordinator shall inform the complainant at the initial counseling stage how this notice provision may eventually affect the confidentiality of the complaint.
- E. **Extensions of time.** The chief judge of the court, or other designated presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause.
- F. **Records.** At the conclusion of proceedings under this Plan, all papers, files, and reports will be filed with the court's EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement or document an official personnel action.

§ 3 **Designation and duties of employment dispute resolution coordinator.** The court will from time to time designate a person to serve as the EDR Coordinator and as an Alternate EDR Coordinator as described in section §4(A). The duties of such a person shall include the following:

- A. providing information to the court and employees regarding the rights and protections afforded under this Plan;
- B. coordinating and organizing the procedures and establishing and maintaining official files of the court pertaining to complaints and other matters initiated and processed under the court's EDR Plan;
- C. consulting with individuals during the initial stages of the complaint process, in accordance with Section 5 of this Chapter;
- D. collecting, analyzing, and consolidating statistical data and other information pertaining to the court's EDR Plan;
- E. drafting for the court's approval an annual report to the Administrative Office; and
- F. recommending to the court modifications to this Plan and suggestions for improvement in implementation.

The person serving as EEO Coordinator on the effective date of this Plan shall automatically become the initial EDR Coordinator.

**§ 4 General provisions relating to unavailability and disqualification.** The following provisions are included to provide a mechanism to assure prompt consideration of complaints under this Plan and to address situations in which a person who would otherwise be involved in processing or resolution of a complaint under this Plan, because of such person's involvement in the employment decision in question or because of the potential effect on such person by the resolution of the complaint, might be reasonably viewed as biased:

- A. The court may from time to time designate a person to act as an Alternate EDR Coordinator. Discrimination complaints may be filed with the Alternate EDR Coordinator if the EDR Coordinator is unavailable, if the complaint relates to a matter involving the employing office of the EDR Coordinator, if the EDR Coordinator is named in the complaint or otherwise is directly involved in the complaint, or if the matter is of such a nature that the complaining person reasonably believes that the Alternate EDR Coordinator's gender makes them a more appropriate person with whom to file. The Alternate EDR Coordinator shall perform the duties assigned in this Chapter to the EDR Coordinator with respect to any complaint filed with them.
- B. The chief judge may from time to time, either by a continuing delegation or by a delegation for purposes of a particular matter, designate another judicial officer of the court to perform the duties assigned in this Section to the chief judge. A party may seek disqualification of a judicial officer, employee or other person involved in a dispute by written request to the chief judge. Such written request shall specify why the individual should be disqualified.

**§ 5 Consultation**

- A. **Initiating a proceeding; formal request for counseling.** An employee who believes that his or her rights under this Plan have been violated must first request consultation with either the court's EDR Coordinator or Alternate EDR Coordinator.
- B. **Form and manner of requests.** Requests for consultation—
  - (1) are to be submitted to the court's EDR Coordinator or Alternate EDR Coordinator;

- (2) must be made in writing on the form attached to this plan as optional Form 1; and
- (3) must be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation.

**C. Procedures.**

- (1) **Who may serve.** Consultation shall be conducted by the court's EDR Coordinator or Alternate EDR Coordinator, unless the EDR Coordinator or Alternate EDR Coordinator are disqualified from serving pursuant to Section 4 of this Chapter, or otherwise unavailable. In such instances, the chief judge of the court shall designate another qualified individual to perform this function. If the dispute involves an alleged violation of this Consolidated Plan by a judicial officer, the person who conducts the consultation process shall be a judicial officer designated by the chief judge.
- (2) **Purposes of consultation.** The purposes of the consultation process shall be to informally discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; to contact the court unit executive of the employee's employing office in order to attempt to resolve the disputed matter; and to assist the employee in achieving an early resolution of the matter, if possible.
- (3) **Confidentiality.** All contacts made, information obtained or exchanged and representations made by the complainant, the head of the office in which they are employed, any witness(es) and all other information obtained during the consultation process shall be treated in the same manner as other sensitive personnel issues which are normally confidential and for official use only. A written record of contacts made by the EDR Coordinator (or Alternate EDR Coordinator) must be kept and made available for review by the affected person(s). The EDR Coordinator and Alternate EDR Coordinator shall not discuss the request for consultation with each other unless the employee agrees in writing. See also chapter 8 section §2(D)
- (4) **Form of settlement.** The EDR Coordinator (or Alternate EDR Coordinator) shall reduce to writing any settlement achieved during the

consultation process. Any written settlement should provide notice to and accommodation of the interests of all persons who may be adversely affected by the settlement. Any settlement should be signed by the employee, his or her representative, if any, and all other individuals who, in the judgment of the chief judge, are necessary to implement the settlement, but need not be signed by all employees who may claim to be adversely affected thereby.

- D. Duration of period for the consultation.** The consultation period shall not exceed 30 days (or a shorter period if counseling is concluded at an earlier date), beginning on the date the request for consultation is received by the EDR Coordinator or Alternate EDR Coordinator. The consultation period may be extended by the mutual agreement of the EDR Coordinator (or Alternate EDR Coordinator) and the employee for an additional 30 day period.
- E. Conclusion of the consultation period and notice.** The EDR Coordinator (or Alternate EDR Coordinator) shall notify the employee in writing of the end of the consultation process and notice shall also be given to the head of the employing office. As part of the notice, the EDR Coordinator (or Alternate EDR Coordinator) shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator (or Alternate EDR Coordinator) a request for mediation in accordance with Section 6 of this Chapter.

## § 6 Mediation.

- A. Initiation.** Within 14 days after receipt by the employee of the written notice of the conclusion of the consultation period, the employee may file a request for mediation with the EDR Coordinator or Alternate EDR Coordinator. The request must be made in writing on the form attached to this Plan as optional Form 2 and must state the claim(s) presented. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.
- B. Procedures.**
- (1) Designation of mediator.** Within 14 days after a request for mediation is received, the chief judge shall designate a mediator and provide written notice of such designation.
  - (2) Who may serve as mediator.** Any person with the skills to assist in resolving disputes, except the court's EDR Coordinator or Alternate EDR

Coordinator, may serve as a mediator under this Plan. If the claim is that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the chief judge.

- (3) **Purpose of mediation.** The mediator shall meet separately and/or jointly with the employee and representative, if any, and the unit head, or designee, of the employing office to discuss options for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution. The mediator shall also meet separately and/or jointly with any other employee who may be affected uniquely and adversely by the potential resolution of the dispute.
- (4) **Confidentiality.** No person involved in the mediation process shall disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with parties directly involved in this mediation process or their representatives. In addition, in the event the employee files a complaint pursuant to Section 7 of this Chapter, the hearing officer shall have access to the record of any claims raised in mediation. (The provisions of this paragraph shall not be interpreted as precluding or limiting private communications between a person and his or her representative, or as requiring a record of such communications.) Once a matter enters the mediation stage, and until final resolution of the complaint, any individual involved in an alleged violation of the provisions of this plan has the right to reasonable notice of the contentions made by the complaining party and an opportunity to respond to those allegations. The EDR Coordinator (or Alternate EDR Coordinator) shall send to the Chief Judge for information purposes a copy of any optional Form 2, 3, or 4 that may come into his/her possession, as well as a copy of the notice heretofore described in subsection E of part 5. The EDR Coordinator (or Alternate EDR Coordinator) shall inform the complaining and complained-of parties at the initial counseling stage how the notice provision may eventually affect the confidentiality of the complainant.
- (5) **Form of settlement.** The mediator shall reduce to writing any settlement achieved during the mediation process and provide copies to all parties and to any adversely affected person. If the settlement imposes a financial burden on the court's budget, the approval of the chief judge shall also be required.

- C. **Duration of mediation period.** The mediation period shall not exceed 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, he or she may proceed to file a complaint. The mediation period may be extended by mutual agreement of the mediator and the employee.
- D. **Conclusion of mediation period and notice.** If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator (or Alternate EDR Coordinator) shall provide to the employee, the employee's representative, if any, and the head of the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 7 of this Chapter. An employee may bring to the attention of the Chief Judge the fact that more than 30 days have elapsed since the beginning of the mediation period without such notice having been received.

§ 7 **Complaint, review and hearing.**

- A. **Complaint.** Not later than 14 days after receiving notice of the end of the mediation period, an employee may file a complaint with the chief judge (or, if such person is disqualified or unavailable, with the judge of the court in active service next most senior in service). The complaint shall be in writing on the form attached to this plan as optional Form 3, shall be signed under penalty of perjury, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought. The respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint.
- B. **Review of pleadings.**
- (1) **Reviewing official.** The complaint and any other documents shall be reviewed by the chief judge of the court, or by another judicial officer of the court designated by the chief judge. In the event the chief judge is disqualified under Section 4 of this Chapter, or is unavailable to serve under this subsection, the reviewing official shall be designated in accordance with the provisions of Section 4. If a complaint filed within the scope of this plan alleges that a judge has violated rights protected by the Plan, that judge may elect to have a hearing conducted by a judge of another court, as designated by the Judicial Council of the Eleventh Circuit.

Any designation of a judicial officer from another court to hear and decide the case shall be arranged by agreement of the chief judges of the affected courts.

- (2) **Review procedures.** After notice to the complainant and an opportunity to respond, the chief judge or designated judicial officer may dismiss in writing any complaint that is found to be plainly without merit, untimely, or unduly repetitive of a previous complaint, that fails to state a claim upon which relief may be granted, or that makes claims that were not advanced in mediation.

**C. Hearing procedures.**

- (1) **Hearing officer.** If the chief judge or designated judicial officer does not dismiss the complaint under the preceding subsection, the chief judge or designated judicial officer, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
- (2) **Specific provisions.** The presiding judicial officer may provide for appropriate discovery and investigation. The presiding judicial officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:
  - (a) the hearing shall be commenced no later than 60 days after the filing of the complaint;
  - (b) the complainant and the unit head of the office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to any individual alleged to have violated rights protected by this Plan;
  - (c) at the hearing, the complainant will have the rights to representation, to present evidence on his or her behalf, and to examine and cross-examine witnesses; the unit head will have the right to present evidence and to examine and cross-examine witnesses;
  - (d) a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;



- (e) in reaching his or her decision, the chief judge or designated judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII of this Plan and by decisions of the Judicial Council of the Eleventh Circuit under Section 8 of this Chapter;
- (f) remedies may be provided in accordance with Section 9 of this Chapter where the hearing officer finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated;
- (g) the final decision of the chief judge or designated judicial officer must be issued in writing not later than 60 days after the conclusion of the hearing;
- (h) all parties, shall receive written notice of any action taken as a result of a hearing; and,
- (i) if the relief or remedy sought would uniquely and adversely affect another employee, that employee and his or her representative, if any, shall have the same rights to notice and to participation in the hearing as afforded to the complainant.

**§ 8 Review of decision.** A party or individual aggrieved by a final decision of the chief judge or designated judicial officer, or by a summary dismissal of the complaint, may within 21 days of the date of the letter transmitting the decision of the chief judge petition for review of that decision under procedures set forth in Chapter IX of this Plan.

**§ 9 Remedies.**

- A. Where judicial officers acting pursuant to section 7 or 8 of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively ensuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B. Remedies which may be provided to successful complainants under this Plan include, but are not limited to:
  - (1) placement of an employee in a position previously denied;

- (2) placement in a comparable alternative position;
- (3) reinstatement to a position from which previously removed;
- (4) prospective promotion to a position;
- (5) preferred consideration for a future promotion or placement in another position for which the complaining party is qualified;
- (6) subject to appropriation, back pay and associated benefits, pursuant to 5 U.S.C. §5596;
- (7) records modification and/or expungement;
- (8) "equitable" relief, such as temporary stays of adverse actions;
- (9) granting of family and medical leave; and
- (10) accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.

C. Remedies which are *not* legally available include:

- (1) compensatory damages; and
- (2) punitive damages.

**§10 Record of final decisions.** Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Judicial Council of the Eleventh Circuit.

## CHAPTER IX. REVIEW PROCEDURES.

**§1 Review of decision.**

A party or individual aggrieved by a final decision of the chief judge or designated judicial officer, or by a summary dismissal of the complaint, may seek review of that decision under the procedures hereinafter set forth. The standard governing such review shall be whether the decision is supported by substantial evidence on the record as a whole. The EDR Coordinator (or Alternate EDR Coordinator) shall be responsible for submitting the complete record of the proceeding to the Circuit Executive for use by the Judicial Council.

- (a) **Time, Place and Manner of Filing a Petition for Review.** A party or individual aggrieved by a final decision of the chief judge or designated judicial officer, or by a summary dismissal of the complaint, may within 21 days of the date of the letter transmitting the decision of the chief judge file with the Circuit Executive a petition for review by the Judicial Council in the form attached to this plan as optional Form 4.
- (b) **Receipt of timely petition in proper form.** Upon receipt of a timely petition for review filed in the form required, the Circuit Executive shall promptly acknowledge receipt of the petition and transmit a copy to the head of the court unit or office in which the complainant is employed, and the complained-of judicial officer who determined the matter (or other official who summarily dismissed the complaint). Neither the person filing the petition for review nor the judicial officer who determined the matter (or other official who summarily dismissed the complaint) may otherwise communicate with the Judicial Council or any of its members about the matter. Fourteen (14) days after the acceptance of a petition for review, the Circuit Executive shall send to each non-disqualified member of the Judicial Council copies of (1) the original complaint and any documents filed pertaining to it; (2) the record of proceedings; (3) the decision affecting the complaint and any documents filed pertaining to it; (4) the petition for review, (5) the response, if any; and (6) a ballot.
- (c) **Receipt of petition not in proper form or out of time.** Upon receipt of a petition for review not filed on the form required within 21 days of the decision determining the original complaint, the Circuit Executive shall return the petition and explain why it was returned.
- (d) **Review of order**

**Ballot.** The ballot referred to in §§(b) shall ask the non-disqualified members of the Judicial Council whether the petition for review should be considered at the next meeting of the Council. If, within 14 days of the date on which the Circuit Executive sends the ballot to the members of the Council, no member of the Council votes that the petition be considered at the next meeting, the original decision or dismissal shall be deemed affirmed.
- (e) **Decision by Judicial Council.**
  - (1) A petition for review placed on the agenda of a meeting of the Judicial Council shall be decided by a majority of the non-disqualified members of the council present at the meeting.

- (2) The Judicial Council may enter an order (a) affirming the original decision or summary dismissal; (b) directing further investigation; or (c) directing corrective action including remedies set forth in §9 of this plan. The Judicial Council may also take any other action within its authority pursuant to 28 U.S.C. §§ 332, 372.
- (3) The order of the Judicial Council may be accompanied by a separate memorandum setting forth facts and containing findings and conclusions made by the Judicial Council. The order shall be accompanied by any separate or dissenting statements by members of the Council.
- (4) The Circuit Executive shall provide to the complainant and the complained-of official a copy of the order and any separate or dissenting statements issued by members of the Council, and shall inform them that the Council's decision is final.
- (5) The Circuit Executive shall transmit a copy of the order to the Chief Judge and maintain a summary record that clearly identifies the nature of the proceeding and the disposition reached.
- (f) **Complained-of judge.** A complained-of judge and the judge rendering the decision that initially determined the matter which is under review by the Council is disqualified from participating in deliberations or decisions by the Judicial Council.
- (g) **Withdrawal of petition.** A complainant may withdraw a petition for review at any time before the Judicial Council acts on the petition.

## § 2 Finality

The decision of the Judicial Council is final and not subject to further review.

## CHAPTER X. OTHER PROVISIONS.

### § 1 Annual Reports.

The EDR Coordinator shall annually provide to the court for its review, approval, and submission to the Administrative Office of the United States Courts a report on the implementation of this Plan. This report shall be in the format, and contain such information, as may be prescribed by the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

**§ 2 Notice of Plan.**

A copy of this Plan and of any subsequent modification shall be given to each employee and, upon request, to applicants and members of the public. A copy of this Plan and any subsequent modifications shall also be filed with the Administrative Office.

**§ 3 Effective date.**

Subject to approval by the Judicial Council, this Plan takes effect on January 1, 1999. Any modifications (except with respect to the provisions of Section 6 of Chapter II) or with respect to the optional grievance plan set forth as an addendum to this plan shall not take effect until approved by the Judicial Council of the Eleventh Circuit.